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Whose Law Is It Anyway? NLRB Dings Company For Actions Related To FLSA (Not NLRA) Lawsuit

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The National Labor Relations Board (NLRB) raised eye brows in 2015 when it ruled that an individual who filed a collective action claim pursuant to the Fair Labor Standards Act (FLSA) in federal court was engaged in "protected activity" under the National Labor Relations Act (NLRA). The board then rendered a similar ruling last year, again finding that the filing of an FLSA collective action is protected by the NLRA. Notably, the FLSA has its own anti-retaliation provisions, but the NLRB has decided to potentially offer an extra layer of protection for employees who have filed FLSA actions by offering them possible cover under the NLRA as well. Will the new Trump-NLRB reverse course and find FLSA-retaliation claims are more appropriately handled under the FLSA versus NLRA? For now, at least, the answer is "no." On March 20th, the agency issued a decision in *Village Red Restaurant Corp*. in which it again held that the filing of claims pursuant to the FLSA can constitute protected activity under the NLRA. The NLRB specifically held that the company violated the NLRA by discharging or constructively discharging several employees involved in an FLSA lawsuit. The board is still split with two Obama-appointees and two Trump-appointees, so it remains to be seen if the outcome in these types of cases will be different once Trump has a 3-2 majority at the NLRB (Trump's nomination of David Ring for the fifth and final seat at the agency is pending). Stay tuned.

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